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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-5150

2009 JUN -4 P 3:09

UNITED STATES
DISTRICT COURT

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

GLENN FRATTIN

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

WEDNESDAY, FEBRUARY 18, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above
5 matter taken by Theresa O. Mastroianni, Certified
6 Court Reporter, license number 30X100085700, and
7 Notary Public of the State of New Jersey at the
8 United States District Court House, One Gerry Plaza,
9 Camden, New Jersey, 08102, commencing at 2:30 PM.
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1 JUDGE BISSELL: I'm reopening
2 proceedings in the matter of Glenn Frattin, civil
3 number 08-5150.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Frattin.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Frattin was housed in Trailer
18 Number Three and was extracted from that trailer on
19 or about August 2nd, 1997 for the purpose of having
20 that trailer searched. I might note that Officer
21 Buganski, who was on duty there at that time
22 testified that the extraction was routine, without
23 incident or violence. On the other hand, as Mr.
24 Frattin describes it, the events that occurred to him
25 would not likely have been in Officer Buganski's line

1 of sight.

2 Mr. Frattin testified on October 30,
3 2008 and describes his first alleged assault as
4 follows, beginning at page 14, line 14 and starting
5 with his answer there:

6 "Answer: Well, I was laying on my bed
7 the way they told me and I was pulled by the arm and
8 thrown down on the floor. And I had sustained a
9 nerve that connects the shoulder to the arm and it
10 just popped."

11 He talks thereafter about the fact that
12 this shoulder injury continued to be a problem,
13 continued to nag him and bothered him and I think you
14 can say to some extent was permanent up to the
15 present.

16 However, he did acknowledge that
17 despite the supposed continuation and severity of
18 this condition, he never sought treatment for it. He
19 maxed out of Bayside shortly after this event,
20 apparently, and on page 16 he was asked once again
21 beginning at line 14:

22 "Question: Did you seek medical
23 treatment for your shoulder during the times you were
24 not incarcerated?

25 "Answer: No.

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1 "Question: Did you ever treat with any
2 therapists for your shoulder?

3 "Answer: I was the therapist.
4 Everyday I kept moving to try to make my body
5 better."

6 As far as this incident is concerned, I
7 do not find that the technique employed here by the
8 SOGs to remove him from his bunk and onto the floor,
9 (by the way there is no testimony in this record that
10 he was in an upper bunk and hence was propelled some
11 four or five or six feet to the floor), is cruel and
12 unusual punishment. At worst, one might say it is
13 the result of negligence on behalf of the officers in
14 the manner of their extraction because they put an
15 extra strain on his shoulder in doing this.

16 Once again, however, we are not dealing
17 here with a state tort claims act case or a personal
18 injury action under common law. This is a section
19 1983 case predicated on the use of excessive force
20 for the intentional infliction of cruel and unusual
21 punishment. I do not find that that's what
22 transpired in this particular instance.

23 Furthermore, the fact that plaintiff
24 sought no professional treatment after his release
25 diminishes the significance of the injury ascribed to

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1 the officer's conduct. Accordingly, I do not find
2 that this particular incident is actionable.

3 In the second incident he recalls
4 having been hit in the head while on the gym floor
5 during the time that the Trailer Three people were in
6 the gym awaiting the completion of the searching of
7 that trailer. He talks about being in the gym where
8 he was seated up toward the front of the room and the
9 questioning in this respect is found on
10 cross-examination beginning at page 30, line 24.

11 "Question: Okay. Now, isn't it true
12 that you were sitting in the front and the rest of
13 the inmates were sitting behind you?

14 "Answer: Yes.

15 "Question: Okay. But despite that you
16 saw them being beat?

17 "Answer: That's why I got hit in the
18 head, because I turned around.

19 "Question: Exactly. You were told in
20 the gym to remain seated and to keep your head down;
21 is that correct?

22 "Answer: Yes.

23 "Question: And you picked up your head
24 and you turned to look behind you and you were struck
25 one time in the back of your head, is that correct?

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1 "Answer: Yes.

2 "Question: With a hand, not with a
3 stick, not with an object, but with a hand; is that
4 correct?

5 "Answer: Yes.

6 "Question: After that, you didn't look
7 around again, did you?

8 "Answer: My neck was in a lot of pain
9 from looking down.

10 "Question: After that you didn't look
11 around behind you again, correct?

12 "Answer: No."

13 Thus, I determine that in this
14 particular instance one blow with the hand in order
15 to enforce a direction with regard to the conduct of
16 this prisoner, along with a large number of others
17 assembled together in the gym, and also to reprimand
18 him for having disobeyed that order also does not
19 constitute the use of excessive force within the
20 contemplation of the law as it's evolved in this area
21 and as recited in the jury instructions which govern
22 these proceedings.

23 I find that in each of these instances
24 a certain amount of force was exerted, but that it
25 was not excessive and not intentionally inflicted for

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1 the purpose of causing injury or anything that could
2 be described in the nature of punishment, rather than
3 merely in the discharge of the valid penalogical
4 purpose of exercising control over the prisoner at
5 the outset in his cell and then enforcing a directive
6 which he violated when he was in the gym.

7 Finally, although not every item of
8 evidence has been discussed in this opinion/report,
9 all evidence presented to the Special Master was
10 reviewed and considered. For the reasons set forth
11 above, I recommend in this report that the district
12 court enter an order and judgment of no cause for
13 action with regard to Glenn Frattin.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hercinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: February 19, 2009

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